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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/089,284	08/15/2002	Andreas Lesche	GK-OEH-127 / 500814.20028	9380
26418	7590	12/28/2007	EXAMINER	
REED SMITH, LLP ATTN: PATENT RECORDS DEPARTMENT 599 LEXINGTON AVENUE, 29TH FLOOR NEW YORK, NY 10022-7650			LEVKOVICH, NATALIA A	
			ART UNIT	PAPER NUMBER
			1797	
			MAIL DATE	DELIVERY MODE
			12/28/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Office Action Summary</b></p>	<p>Application No.</p> <p align="center">10/089,284</p>	<p>Applicant(s)</p> <p align="center">LESCHE ET AL.</p>	
	<p>Examiner</p> <p align="center">Natalia Levkovich</p>	<p>Art Unit</p> <p align="center">1797</p>	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 10-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/02/2007 has been entered.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Claim 10 recites the holes in orienting plate having smaller cross-sections than the holes in the carrier plate. Examiner found no support for this limitation in the specification.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. The 35 U.S.C. 112, first paragraph, rejection of claims 10-18 as failing to comply with the written description requirement, is withdrawn, in view of the latest amendments.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 10-18 are rejected under 35 U.S.C. 112, second paragraph, as being unclear for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 10 recites a carrier plate 'shaped to be inserted into the slide guide located below the plurality of pipetting channels of the pipetting device.

The 'slide guide' and the 'plurality of pipetting channels' lack antecedent basis.

It is also unclear what shape is intended by Applicant, since neither the structure, nor the orientation of the 'slide guide' and the 'pipetting device' have been specified. Additionally, these elements are accorded no patentable weight because they are not included to be a part of the claimed invention.

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 10-13 and 16 -18 are rejected under 35 U.S.C. 103(a) as being unpatentable over by Linder (US 5057282).

Referring to claims 10-11 and 18, Linder discloses a tray for pipette tips which includes two parallel panels 4, 28 ['carrier plate' and 'orienting plate'], each having an array of holes arranged in registration (Figure 1, Abstract). The plates support tips 104 having collars 108 (Figure 7). Linder also teaches that the openings 46 on the second panel 28 may have the same or an enlarged diameter relative to the openings 46 on the first panel 4 (see Col.3, lines 50-60).

Although Linder does not teach the holes of the lower ['orienting'] plate to be smaller than those of the upper ['carrier'] plate, it would have been clearly within the ordinary skill of an artisan at the time the invention was made to have employed smaller holes in the lower plate of the modified apparatus of Linder, in order to provide additional support for the tips.

Regarding claims 12 and 16, Linder teaches that the assembly comprises two "opposed, substantially rectangular side panels ['spacers communicating

with the two plates outside the hole arrangement'] secured ['fixedly connected'] to the first array panel -(see Col.3, lines 20-30 ; Col.4, line 30; Fig. 1).

With respect to claim 13, Linder discloses in Figures 7 and 11, flaps 19, 21 and 24 forming a handle which also serves as a spacer ['handle plate' – Ex.].

As to claim 17, Linder teaches that "each of the first array panel ['carrier plate' – Ex.] and the second array panel ['orienting plate' – Ex.] is provided with an array ... of a plurality of through holes or openings .... The openings may be uniformly of a selected diameter as shown or may be a mix of various diameters" (Col.3, lines 50-60).

10. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over by Linder in view of Petrek.

Linder does not teach spacers being in the shape of rods. Petrek discloses a pipette tip array pack comprising "a support plate ['carrier plate'-Ex.] with an array of holes containing pipette tips arranged in an organized manner and including a guide for guiding the support plate onto the tip rack with distal end portions of the pipette tips aligned with corresponding holes in an organizing tray ['orienting plate'-Ex.] The support plate includes vertically extending lateral support means ['spacers'-Ex.] adjacent at least some of the holes in the plate"(Abstract). The lateral support surfaces "may take various forms including a plurality of rod-shaped posts 80 (FIG. 5)". It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed spacers shaped like rods in the modified assembly of Linder, in order to prevent the lateral displacement of the tips and to improve overall rigidity of the

structure. With respect to the rods being 'centered between four holes', it would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed the above arrangement in the modified structure of Linder, in order to evenly distribute the load over the assembly and to enhance its stability and security.

### ***Allowable Subject Matter***

11. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art does not teach, or fairly suggest a tip magazine comprising the two plate assembly recited in claim 1, the assembly including spacers in the form of sleeves by which the two plates are fixedly connected with one another.

### ***Response to Arguments***

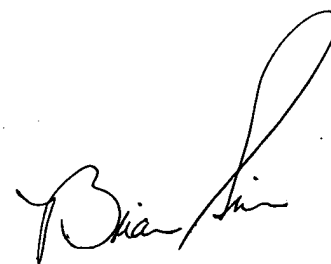
12. Applicant's arguments filed on 10/02/2007 have been fully considered but they are moot in view of new grounds of rejection.

### ***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462. The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



BRIAN SINES  
PRIMARY EXAMINER